

Pay and Benefits

When in an illegal appointment, an employee is often receiving an increased salary and benefits they are not legally entitled to receive. These benefits may include leave credits, health and retirement benefits, salary step advancement, service towards vacation accrual rates, etc. Government Code Section 19275 allows employees who acted in good faith when accepting the appointment to retain the earned salary and benefits. However, if it is determined the employee did not act in good faith when accepting the illegal appointment, the State shall be reimbursed for any compensation received during the illegal appointment.

Cancellation of Status-Related Rights

When the SPB voids an illegal appointment, all status rights to the classification an employee would normally receive are cancelled; this includes tenure in the appointment class, seniority credits, permissive reinstatement rights, eligibility to take promotional examinations, career credits, permanent or probationary status, service toward completion of the probationary period and any other status rights or eligibility stemming from the illegal appointment.

Employment History

Voided illegal appointments will appear on the employee's employment history as a separation transaction from state service. If the employee has former state service that can be considered for reinstatement purposes, termination of the illegal appointment will not break the continuity

of state service, as the employee will be reinstated to their former classification the day immediately following the termination of the illegal appointment.

Questions

Employees with questions regarding their potential illegal appointment should contact their departmental personnel office.



The Illegal Appointment Review Process

Appointments Consultation Unit
State Personnel Board
801 Capitol Mall
Sacramento, CA 95814
www.spb.ca.gov

**An informational brochure for
employees**

Revised 10/08

Introduction

The intent of this pamphlet is to provide employees with basic information about the illegal appointment review process in state service.

Illegal appointments occur when the hiring of an individual does not comply with applicable civil service laws and regulations, and may be the result of administrative mistakes or misinformation, improper clearing of an employment list, or in rare cases, an attempt to circumvent the state's civil service system.

Discovery of the Illegal Appointment

When a state department, agency, board or commission (Agency) determines an employee's appointment is potentially illegal, **the employee shall not be sent home, returned to their former position, or encouraged to relinquish their current position.**

The Agency must immediately notify the State Personnel Board (SPB) in writing of the apparent illegal appointment. The employee will continue to work in the position until notified by the SPB the appointment will end.

Investigation of Facts

When notified of a potential illegal appointment, the SPB will:

- Conduct a thorough review of the facts and relevant documents regarding the appointment

- Review all applicable civil service laws, rules, regulations, and policies
- Determine whether the employee and/or Agency acted in good faith when the appointment was offered and accepted.

Preliminary Decision

The SPB will send a preliminary determination letter to the Agency and the employee after a thorough review of the facts. The Agency should discuss the preliminary letter with the employee, and respond to any questions the employee may have regarding the pending action.

The employee and the Agency will have 15 calendar days to submit additional information to SPB, if necessary, before a final decision is made. The SPB will review all additional information submitted prior to rendering a final decision.

Final Decision

After reviewing any additional information received (if any), the SPB will send a final determination letter to the Agency and employee. If the SPB finds the appointment to be illegal, the appointment will be voided.

The Agency personnel office should discuss the final determination with the employee, in order to respond to any questions they may have, and to inform them of their reinstatement eligibility. If the employee has no former state service, they will be separated from state service.

If the SPB's final determination is that the appointment is legal, the employee will continue to work in the position.

Alternative Actions

If the SPB determines the employee accepted the appointment in good faith, they may discuss alternative corrective measures with the Agency in order to mitigate the negative effects of voiding an appointment. These alternative measures can include:

- Placing the employee's name back on the employment list
- Conducting a deferred examination
- Other options agreed upon by the SPB and the Agency.

Appeal Rights

If the appointment is found to be illegal, the employee and/or their Agency have the right to appeal the SPB's final decision.

Such appeals must be in writing, and must be filed within 30 calendar days of receipt of the final decision to void the appointment.

Appeals shall be addressed to:

State Personnel Board
Appeals Division
801 Capitol Mall
Sacramento, CA 95814.